

REMARKS

Claims 2, 10-12 and 17-19 are amended to correct inadvertent typographical errors.

It is respectfully submitted that the present amendment presents no new issues or new matter and places this case in condition for allowance. Reconsideration of the application in view of the above amendments and the following remarks is requested.

I. Objections to the Claims

The Examiner states that should claims 1 and 3 be found allowable, claims 6 and 13 will be objected to under 35 CFR 1.75 as being a substantial duplicate thereof. Applicants respectfully disagree.

Claims 1 and 3 recite that the xylanase element can be either a polypeptide having at least 80% identity to the amino acid sequence shown in positions 1-182 of SEQ ID NO: 2 or a polypeptide which is encoded by a DNA sequence which can hybridize at 41 C in 0.1 x SSC to the complementary strand of nucleotides 142-687 of SEQ ID NO: 1. In contrast, claims 6 and 13 recite that the xylanase element is a polypeptide having at least 80 % identity to the amino acid sequence as shown in positions 1-182 of SEQ ID NO: 2; i.e., only one of the two options for the xylanase element identified in claims 1 and 3.

Applicants therefore ask that the Examiner reconsider the proposed objection upon the allowance of claims 1 and 3.

Claims 10-12 and 17-19 have been objected to for reciting that the "xylanase is a polypeptide is encoded." Applicants have amended the claims as suggested by the Examiner, thereby obviating the objection.

Applicants respectfully request reconsideration and withdrawal of the objection.

For the foregoing reasons, Applicants submit that the claims overcome the objections. Applicants respectfully request reconsideration and withdrawal of the objections.

II. The Rejection of Claim 2 under 35 U.S.C. 112, Second Paragraph

Claim 2 stands rejected under 35 U.S.C. 112, second paragraph, as allegedly being indefinite. This rejection is respectfully traversed.

The Examiner states that it is not clear what a "maltogenic alpha-xylanase" is, as recited in claim 2. Applicants have amended the claim to recite a maltogenic alpha-*amylase*. Support for the amendment appears throughout the specification as filed including, e.g., page 3, lines 24-32.

For the foregoing reasons, Applicants submit that the claims overcome this rejection under 35 U.S.C. 112, second paragraph. Applicants respectfully request reconsideration and withdrawal of the rejection.

III. The Rejection of Claims 1-19 under 35 U.S.C. 103

Claims 1-19 stand rejected under 35 U.S.C. 103 as being unpatentable over Dutron et al., WO2004/023879 ("R1"). The Examiner states that R1 discloses the incorporation of xylanases into dough to improve the baking properties of the baked product, and states that a preferred xylanase is the xylanase of *B. halodurans* C-125. The Examiner alleges that it would have been obvious to one of ordinary skill in the art to add xylanase to dough and bakery products to improve their properties. This rejection is respectfully traversed.

Obviousness is a question of law based on underlying findings of fact. An analysis of obviousness must be based on several factual inquiries: (1) the scope and content of the prior art; (2) the differences between the prior art and the claims at issue; (3) the level of ordinary skill in the art at the time the invention was made; and (4) objective evidence of nonobviousness, if any. *Graham v. John Deere Co.*, 148 USPQ 459, 467 (1966). The teachings of a prior art reference are underlying factual questions in the obviousness inquiry. *Para-Ordnance Mfg., Inc. v. SGS Imp. Int'l, Inc.*, 37 USPQ2d 1237, 1240 (Fed. Cir. 1995). "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR Int'l Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 quoting *In re Kahn*, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006).

While the Examiner alleges that it would be obvious to add xylanase *generally* to dough and bakery products, the Examiner has provided no articulated reasoning with some rational underpinning as to why it would have allegedly been obvious to one of ordinary skill in the art to do so with the *particular* xylanase according to Applicants' claims, i.e., a polypeptide having at least 80 % identity to the amino acid sequence as shown in positions 1-182 of SEQ ID NO: 2 or a polypeptide which is encoded by a DNA sequence which can hybridize at 41°C in 0.1 x SSC to the complementary strand of nucleotides 142-687 of SEQ ID NO: 1. In fact, the xylanase identified in R1 has low sequence identity of only approximately 8% to the xylanase of Applicants' claims. Accordingly, the Examiner has not met his burden in establishing a *prima facie* case of obviousness.

For the foregoing reasons, Applicants submit that the claims overcome this rejection under 35 U.S.C. 103. Applicants respectfully request reconsideration and withdrawal of the rejection.

IV. Conclusion

In view of the above, it is respectfully submitted that all claims are in condition for allowance. Early action to that end is respectfully requested. The Examiner is hereby invited to contact the undersigned by telephone if there are any questions concerning this amendment or application.

All required fees were charged to Novozymes North America, Inc.'s Deposit Account No. 50-1701 at the time of electronic filing. The USPTO is authorized to charge this Deposit Account should any additional fees be due.

Respectfully submitted,

Date: April 23, 2010

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